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# Explaining Abuse of the Disabled Child

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## Explaining Abuse of the Disabled Child

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**Abstract:** This article discusses abuse of disabled children in terms of two competing theories for why it may occur. The evolutionary biology theory has been discussed in the legal literature as well as in biological and social science pieces. The author contrasts this theory with a novel one, mimetic desire, which may be less familiar in legal circles, but which, he believes, better explains the abuse of Attention Deficit Hyperactive Disorder children and offers more hope for preventing abuse without disrupting intact families. While the evolutionary biology explanations for child abuse may be helpful and important, more territory can be covered by Stanford professor Rene Girard's mimetic cycling theory. In addition, this better fits the social capital literature in which, in Yoshihiro Francis Fukuyama's work, for example, biology plays a helpful, though not completely satisfying, role. Social capital and mimetic theory in particular seem to do a more complete job of explanation.

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**Full text:** I. Introduction

This article discusses abuse of disabled children in terms of two competing theories for why it may occur. The evolutionary biology theory has been discussed in the legal literature as well as in biological and social science pieces. I contrast this theory with a novel one, mimetic desire, which may be less familiar in legal circles, but which, I believe, better explains the abuse of Attention Deficit Hyperactive Disorder (ADHD) children and offers more hope for preventing abuse without disrupting intact families.

Families benefit from the support of outside communities.<sup>1</sup> Families also enhance their surrounding communities in myriad ways. For one thing, families create much social and human capital and families themselves are communities. As one Pilgrim father famously put it, each family is "a little commonwealth."<sup>2</sup> For example, families produce goods<sup>3</sup> (whether market goods, children, increased individual productivity in the labor force<sup>4</sup> or simply happiness). Families develop their own rules,<sup>5</sup> their own histories, and sometimes their own language. Family members may specialize in the ways they contribute,<sup>6</sup> and, to the extent they do, the family may reap the benefits of comparative advantage, similar to nations in a world market.<sup>7</sup> Like nations welcoming immigrants, families may take in new members through adoption, marriage, or foster parenting. In extreme cases, they may expel, or at least disinherit, members who cannot get along or fit in. Families may be viewed by those on the outside as a single unit.<sup>8</sup> For their members, families provide shelter, protection, support, and education for children. Historically, families had rulers or heads, and the parent-child relationship functioned in many ways like that of master and servant.<sup>9</sup>

Families, like countries, may become troubled. Consider the model of Stanford Professor René Girard, who explores the connection between community formation, violence, and religion. He begins his / See Satan Fall Like Lightning<sup>10</sup> by observing that people learn by copying. He maintains that, in fact, copying, or imitating others, is what sets humans apart from other animals.<sup>11</sup> We desire mimetically what others, our role models, desire.<sup>12</sup> In his *Deceit, Desire and the Novel*, Girard, using mimetic desire theory, explains "love triangles" in novels by Stendahl and Dostoyevsky.<sup>13</sup> There Girard traces that tendency writ large and from what is with children essentially necessary and good to something sinister, what he calls "mimetic desire." Mimetic desire always mediates: that is, something is not desired because of its intrinsic benefits, but because the other, a model-turned-rival, wants it.<sup>14</sup>

Girard puts forth historical, anthropological, and literary evidence to make his case that societies use

violence,<sup>15</sup> resolved in a particular way, to solve what economists call collective action problems. Periodically, Girard maintains, when society is under great stress from something like an epidemic or famine, jealousies, ambition, or envy (all of which are characteristics of mimetic desire), the looming crisis is finally resolved by identification of a single person or small group of people.<sup>16</sup> The victim or victims are identified through what he describes as a contagious mob action and are vilified as the source of the problem and ultimately are punished by violence - murder or expulsion from the community. If there is sufficient unanimity in the community, the scapegoats are afterwards treated as mythical heroes or demigods. Girard uses examples ranging from Greek and other mythology, Jonah in the Bible, and medieval witch hunts to Nazi Germany<sup>17</sup> to illustrate his point. (His scholarly disciple Gil Bailie<sup>18</sup> updates these to include incidents like the Rodney King police beating and various African civil wars.). Once the societal catharsis occurs, the perpetrators of the violence will feel they have done the correct thing and will be, for a time, united as a cohesive group, frequently using the occasion as the beginning of a new society. If there is not sufficient agreement (or unanimity minus one, who is the scapegoat), the violence will escalate. Society may descend into Thomas Hobbes's vision of "all against all."<sup>19</sup> Girard's / See Satan turns from anthropology to theology when he maintains that the Judeo-Christian tradition sees through this pattern by sympathizing with the victim, rather than the perpetrators of violence. He sees less contemporary success on the societal level for resolving unity problems through mimetic crisis and scapegoating because we do not mythologize what happened. That is, the mythologizing was accompanied by social unification. Now there may just be mimetic violence. However, (as I remember from my college days in the 1960s) we are still likely to be carried away by the crowd frenzy. Girard maintains that we may be able to turn away and refrain from the lynching (or mimetic cycle), especially if we can imitate God by thinking largely in trusting and loving ways. Those who do so will be rewarded, in Richard McAdams's secular social norms terminology, as "heroes."<sup>20</sup> Though God is imitated mimetically, Girard argues that violence will not result because of the hierarchical and transcendent distance between the desiring human and the desired mediator, God. Consequently the desire takes the form of admiration or veneration, rather than envy and rivalry.<sup>21</sup> Girard describes the scapegoat, the innocent victim upon whom the crowd settles in a mimetic crisis, as most often an outsider, someone foreign or distinguishable because disfigured (or beautiful) or suffering from a mental handicap, sometimes from a social class that rivals the perpetrators.<sup>22</sup> Though this person (or group, if a minority is targeted, as in Nazi Germany) probably has nothing to do with the outward crisis or catastrophe, the crowd believes, at least temporarily, that the scapegoat caused the problem. Or, as with Caiaphas, the head priest in the Christian Bible, there is at least a utilitarian explanation: "[I]t is better that one man should die for the people, than for the whole nation to be destroyed."<sup>23</sup>

Although Girard's work has received tremendous attention in the humanities and criminal justice literature,<sup>24</sup> it makes only occasional appearances in the legal journals, and then mostly is applied directly to questions of punishment or mob violence.<sup>25</sup> As far as I can tell, it has never been applied to family law, or distilled out of the macro-context in which it began and analyzed in smaller social units (other than by Girard in *Deceit, Desire and the Novel*, as discussed above). Families also face crises: infertility, unemployment, substance abuse, illness, disabled children, death of children or parents. Although few will claim that such obstacles are pleasant or easy, many families weather the storm. Once the crisis has passed, couples and families are likely to say that the adversity made their relationships stronger or taught them to value one another more. But a small number of families will do on a small scale precisely what Girard predicts - they will escalate into violence or fly apart. As Girard's work on the difference between externally - and internally-mediated mimetics points out, such dramatic results might be a relatively recent problem. When families were more hierarchical, there would have been less propensity for internally-mediated mimetics; that is, fewer occasions where the model-rival is within the household, rather than outside it - complete with envy and revenge. In other words, contemporary wives are much more apt to be rivalrous with their husbands, not only in terms of love affairs (hence the "lover's triangles"), but also, occasionally, in the labor force. The opportunity for violence and scapegoating therefore

have increased in the late nineteenth and early twentieth centuries as married women's property acts and women's suffrage were enacted, and again at the end of the twentieth century as married women not only entered the labor force, but also sometimes earned the same or more than their husbands. As we will see shortly, the small number of families in which domestic violence occurs often contain unemployed or underemployed spouses.

For another family illustration, Gil Bailie, the anthropologist who popularized Girard's work in the United States, uses the familiar example of children in a nursery fighting over a toy to explain what he means by mimetic desire and rivalry. Bailie calls this "the human predilection for falling under the influence of the desires, positive or negative, adulating or accusatory - of others."<sup>26</sup> One child walks into a room where another child sits among many toys. The newcomer starts to pick up the toy closest to the sitting child, and a struggle begins. The sitting child (who hadn't previously been interested in it) desires the toy because it is wanted by the newcomer. The conflict escalates to crying and hitting until stopped by an adult (or until the toy breaks). Bailie also discusses<sup>27</sup> the Suzanna story from the Catholic and Eastern Orthodox Book of Daniel,<sup>28</sup> in which two lecherous elders ogle the attractive wife of a wealthy merchant. The elders, are inflamed by mimetic desire and then attempt to blackmail Suzanna. (Daniel, a bystander who ends up judging the proceedings, cleverly catches them in their lies and has them executed.) Susanna is attractive from the start because she "belongs" to her husband, a rival, but becomes irresistibly attractive precisely because each of the elders sees that she is attractive in the other's eyes.<sup>29</sup>

Girard names the undesirable qualities of mimetic rivalry as envy, jealousy, resentment, and hatred.<sup>30</sup> Always they become inflamed because another externally validates the desire. As Richard McAdams says, "The effectiveness of one's investment in satisfying relative preferences depends entirely on the amount that others invest."<sup>31</sup> Frequently, as in the Susanna story, the object of desire is still more valuable because it is somehow unobtainable or forbidden. This, of course, is the covetousness forbidden in the Judeo-Christian tradition by the Tenth Commandment.<sup>32</sup>

Applying the scapegoating paradigm to family conflicts, a clergyman recently wrote in one of his sermons: Similarly, even though I'm no psychologist, I have noted that families often seem to unite around a troubled child. One child becomes identified as the "problem child," and fretting over this troubled child becomes the force that unifies the other members of the family. The "troubled child," now cast in this role, is doomed to play this part, failing and struggling so that others might succeed."<sup>33</sup>

Similarly, a popular website on family therapy advises:

In the early part of the 20th century, the psychologist Carl Jung noted that children tend to live out the unconscious conflicts of their parents. And, as Family Systems Theory teaches, all too often a child will be marked as a "problem," the "scapegoat" or "black sheep" of the family - the Identified Patient, in Family Systems language - when really the entire family is locked into some dysfunctional pattern of interaction.<sup>34</sup>

Adolescents, in particular, are apt to perceive differences in treatment between themselves and their siblings.<sup>35</sup> Even more to the point, a guide to prevention of family violence notes:

Thus, psychologists describe a situation where frustration caused by blocked goals can lead to aggressive behavior against a family member.<sup>36</sup> When the person or situation responsible for the frustration is not available as a target of the aggression, people sometimes direct their aggression out on an innocent person, or scapegoat.<sup>37</sup>

We can see scapegoating at work in contemporary advice literature and, reported legal cases, to which we now turn.

#### ? . Family Law Cases and Mimetic Cycles

A California case, *In re Guardianship of Phillip B.*<sup>38</sup> involved a Down syndrome boy, Phillip. Phillip's parents institutionalized him and later did not want him to undergo heart surgery that would prevent his death by age thirty. A married couple that volunteered at the institution befriended Phillip and became his "psychological

parents." After successful litigation, the couple eventually adopted Phillip. Phillip's biological father, Warren Becker, reportedly was quoted in a New York Times article regarding the case.<sup>39</sup> Mr. Becker called the newborn Phillip "a Mongoloid, Down's child with simian characteristics" and "that simian." Mr. Becker, who had two other sons, said at the first trial in the case (when the Beckers were accused of medically neglecting Phillip because they refused to consider the heart surgery) that he thought Phillip would be better off dead than alive. The Beckers' pediatrician had considered Phillip's life "devoid of those qualities which give it human dignity." At the time of the appeal, Mr. Becker said the surgery "might extend his life for a few years, but for what purpose? He's almost seventeen and he's still carrying a teddy bear." He would forever be a burden on others. Girard would call the Becker's treatment of Phillip expulsion rather than active violence, though physical harm to the scapegoat was indirectly involved. Phillip, the undesirable child, was moved out of sight to an institution, and the father and a pediatrician felt he "would be better off dead." The Beckers would rather have invested resources in Phillip's nondisabled brothers.<sup>40</sup> Taking care of a Down syndrome child would be expensive, stressful, and given the lack of treatment of his heart problem, ultimately heart-rending. To some extent, disabled people who are mistreated are different from the victims of mass violence (Girard's mimetic violence). The latter are chosen by lot or because they belong to a minority ethnic or religious group. While disabled people, through no fault of their own, add stress to families and require an expenditure of resources. In these cases, the very fact of the disability may provoke the crisis. This also may explain why adopted children, whose adoptive parents knew the biological parents had problems, are less likely to do well.<sup>41</sup> In the adoption situation, children whose adoptive parents know their biological parents and problems are at risk to get worse letter grades and finish fewer grades in school, earn less, and have less stable marriages. Once the children reveal some behavior the adoptive parents feel is problematic, the parents may (with some justification) blame the biological parents' contribution, rather than any deficiency in their own parenting. They may also feel that they always knew the child would turn out to be a "bad actor."

Biology may also play a role in creating family communities and even in establishing norms.<sup>42</sup> Thus, the presence of stepparents or adult cohabitants may confound families, and kin caregivers might be expected to do a better job with children than unrelated foster parents.<sup>43</sup> G? addition to the mimetic violence of Girard, and as an alternative to it, we can consider the biological explanation for child abuse.<sup>44</sup> Please keep in mind that families in which violence occurs are not the norm: they are rare. However, hopefully through understanding the mechanism by which the violence occurs and is directed against particular family members, we can learn not only to prevent these rare but tragic occurrences, but also how to guard against the less violent forms we see in many families.

### III. When Might a Child Become a Scapegoat?

As Martha Minow notes, living with people who are different, who are ugly or disabled in some way, may enrich our lives.<sup>45</sup> But many parents will prefer their healthy to their disabled offspring.<sup>46</sup> For example, a premature or very ill newborn might be harmed, not only because he is malformed, but also because he must spend many days in intensive care apart from his parents.<sup>47</sup> The parents do not see him as an attractive child when he is finally released to their care.<sup>48</sup>

On the other extreme, throughout their lives, beautiful people are revered by a society that rewards vigor and youth.<sup>49</sup> They are popular as dates and chosen early as mates. The most beautiful of all may grace magazine covers or feature films. Unattractive people are discriminated against in employment<sup>50</sup> and marriage<sup>51</sup> markets. These tendencies are mutually reinforcing. For example, the child who seems less likely to be able to reproduce may be seen as more unattractive<sup>52</sup> and, therefore, be less likely to marry and rear children. As a consequence, unattractive children are less likely to be able to support their parents in old age<sup>53</sup> and, if disabled, may even be unable to support themselves.<sup>54</sup> They are therefore seen as a burden to their parents, who have even on occasion sought damages for their "wrongful birth."<sup>55</sup> Since they are less valuable from a genetic standpoint, they are more apt to be abused by their parents.

A child who has learning disabilities or even more severe mental handicaps is particularly likely to become a scapegoat.<sup>56</sup> Contrary to the previous paragraph, he might, in fact, have just as many chances as the average person to reproduce (especially if somewhat careless about birth control), and, depending on the severity of the disability, may well enjoy a productive life as an adult. However, the parents of a learning-disabled child, especially a bright one, will find the school years much more frustrating and more expensive than they would with a normal child.<sup>57</sup> The parent must "run interference" with school authorities and continually set limits for the child. There may be special education needs, trips to a counselor or medication. All this stretches the parents' capacity and limits leisure time. Further, the child with hyperactivity or attention deficit disorder will frequently be emotionally taxing for the parent.<sup>58</sup> This is a cost, in money, time, and psychological terms. However, for the parents of an eccentric genius, the problems of raising the child may be compensated by the enormous respect earned when the genius reaches adulthood.<sup>59</sup> For the disabled (and particularly the mentally handicapped) child, such compensations are highly unlikely. As one researcher put it, "[s]ome parents do not successfully cope with a disabled child, whose presence may be a constant reminder of disappointed aspirations, perceived punishment, or embarrassment. A disability can also create social and economic pressures that further strain family relationships and budgets, increasing the general level of stress."<sup>60</sup> The child who is in the way may also become a scapegoat. For example, the child of a single mother might impede her chances on the marriage market, or interfere with a new romantic interest.<sup>61</sup> Second marriages involving children of prior relationships stand a much greater chance of dissolving.<sup>62</sup> Further, this child may become a victim of scapegoating because of a biological concern. The parent or stepparent may consciously or unconsciously feel that the child competes for the other adult's affection,<sup>63</sup> thus threatening the mate's chances for producing offspring from the new relationship<sup>64</sup> or, from a psychological perspective, threaten the ongoing adult relationship.

Social capital theory overlaps with this rapidly growing field in evolutionary biology. As genes determine a large part of one's looks, capacities, and character traits, Francis Fukuyama<sup>65</sup> considers genes the engine of evolutionary change. Behavioral biologists<sup>66</sup> see the gene as programmed to replicate itself, using the body in which it is from time to time lodged as a way station. The most successful genes are those best able to reproduce successfully and produce the most offspring who will be able to carry on successfully in the world. Evolutionary biology theories provide an explanation for the presumption of parental fitness (as opposed to third parties unrelated by blood or adoption), with a selfish parental gene seeking to ensure its survival across time in the replicated genes of offspring.<sup>67</sup> But biological theories also suggest that a disabled or unattractive child will be less successful at passing along a parent's genes, and will therefore threaten the parent and be a target for direct abuse.<sup>68</sup> In addition, the child who interferes with the parent's new romantic relationship competes directly with the selfish gene.<sup>69</sup> The other adult or even the child's parent might harm or "eliminate" the threat to the relationship (and potential offspring with the new partner).

Regardless of the source of the problem - whether the competition or disaffection is financial, genetic, or psychological, or stems from mimetic rivalry - there is reason to suspect that parents of disabled children who have already abused them are less likely to profit from reunification services than those who have abused nondisabled children. Likewise, if a parent or other caregiver is choosing a new mate, rather than the child, and, therefore, physically abuses the child or permits abuse, preventing escalation of the abuse or other harm to the child seems to trump the "parental rights." Not all children will be treated as scapegoats, and family autonomy ought to be the preferred approach in most cases. However, once children are treated as scapegoats by their parents, the children are far more likely to be repeatedly abused than other children.

We turn now to empirical tests of these competing theories, the mimetic and the sociobiological. The data indicates that the biological explanations work well for many cases of child abuse, except those dealing with ADHD children. Mimetic rivalry explanations fit all the data and also provide an explanation for why religion seems so important to findings of healthier families. Because family violence is relatively infrequent and

because the data is either kept secret or declared confidential by courts, most of the data is presented here will be relatively small.

#### IV. Empirical Tests

We begin with a specific group of disabled children for whom the sociobiology explanation seems the least appropriate: those with Attention Deficit Hyperactive Disorder (ADHD) and/or Learning Disability (LD). These children are sometimes quite bright (as were Albert Einstein and Thomas A. Edison)<sup>70</sup> and may be physically attractive (Keanu Reeves, Orlando Bloom, and Tom Cruise) so may well be able to successfully mate and bear children. In fact, to the extent that they are less careful and more spontaneous than others, they may be more likely to have unplanned children.<sup>71</sup> Thus, if passing on one's genes were all that was important, parents of ADHD children should not be more likely to abuse them.

Parents of ADHD children frequently feel frustrated.<sup>72</sup> The children may not appear to listen, may constantly wander away from the table or homework, and may well have disappointing school performances.<sup>73</sup> One can easily imagine how frustration may mutate into something much darker when the family is stressed by marital crises or money problems.<sup>74</sup> However, some evidence also shows that these children may sometimes be scapegoats without ever provoking the violence. For example, a large proportion of child abuse occurs where there is a history (in other words, prior indications) of marital violence. A perpetrator may be acting out of mimetic rivalry (that is, being rivalrous with a spouse) while targeting the more susceptible victim, who will not fight back, a child.<sup>75</sup>

If this alternative explanation is correct, we would expect to see a higher percentage of ADHD children in families where abuse occurs than in the general population.<sup>76</sup> If the family in which abuse is found consists of more than one child, and at least one child is not abused, we would expect the target of the abuse to be the child with ADHD, holding everything else constant.

Further, if the mimetic-and-scapegoating patterns are present, we would hypothesize a greater number of families where abuse occurs would be characterized by divorce and dissolution, compared to the general population. This is, in fact, the case.<sup>77</sup> Many of the families particularly stressed by the ADHD child would also have low incomes or unemployment.<sup>78</sup> Finally, we would expect positive coefficients for the combination of dissolution or divorce with ADD<sup>79</sup> and for the combination of low income and ADD. In a study of girls at a summer camp, sixty percent of whom had ADD, the authors found significantly higher rates of abuse for girls with ADHD (14.3%), compared to the population without it (4.5%).<sup>80</sup> Similarly, in a study of boys<sup>81</sup> with various problems, Janet Wozniak and her coauthors found that seven percent of the ADHD population of boys had suffered from child abuse of various kinds, compared to one tenth of one percent of their comparison sample. A simple frequencies count for a Linn County, Iowa, sample<sup>82</sup> shows that 25.2% of the children in the sample had been diagnosed with or were suspected of having ADHD. This is compared to only 5.2% of ADHD children reported in Iowa between 1997 and 1999.<sup>83</sup>

Testing whether disabilities, particularly ADHD, will result in the scapegoating of children presents empirical challenges. The first is a legal one: information about a minor's disability, because it involves children (and their parents), is privileged (and, if not discovered, secret). Getting access to abused children's files is, therefore, a nontrivial task. Further, because the population of abused children is very small (about .025 percent of all children), the number of families who would need to be sampled (to establish a control group) is extremely large.<sup>84</sup> Most of the empirical papers dealing with abuse, therefore, measure whether the sample of abused children contains a significantly higher percentage of disabled children, say, than the total population.<sup>85</sup> My own work deals with families in which children were abused, but only one child of a number of siblings was the target. Allison Briscoe-Smith and Stephen Hinshaw's study of girls at a North Carolina summer camp, where sixty percent of the girls who attended were ADHD and forty percent were not.<sup>86</sup> They then compared various traits of the ADHD girls (the target group) against the non- ADHD girls (the controls). This method means that the sample was not random (since they all attended the special camp), so that care should be taken to apply the

results to the general population. In addition, while the children were socioeconomically and racially diverse, they all came from the Carolinas, so they might not be typical of children from the United States at large. What Briscoe-Smith and Hinshaw reported was that the girls with ADHD were more than three times more likely to have been abused than the non-ADHD girls, even controlling for factors that normally increase the risk of abuse (socioeconomic status, single parenthood, and so forth).

Some work has focused specifically on families with ADHD children. In 1995, Baldwin, Brown and Milan noted that parents from lower socioeconomic backgrounds are apt to be at greatest risk for increased stress.<sup>87</sup> In turn, the stress increased the symptoms displayed in the ADHD children. A later paper<sup>88</sup> argued that ADHD and impairment of daily functioning was highest among youth whose families' financial circumstances are disadvantaged or deprived in relation to their neighbors. All ADHD families exhibited some stress, and tended to use more negative-reactive, and fewer positive, parenting strategies than did non-ADHD parents.<sup>89</sup> Further, marital happiness was lower and day-to-day marital problems higher for families with ADHD children.<sup>90</sup> The results are similar to the results on abuse and neglect presented by Frank Buckley and me,<sup>91</sup> which comes from a 1991 Cornell University panel set drawn from a national sample of abused children and their families.<sup>92</sup> The abuse cases were matched with 300 cases of disabled children (prior to any abuse) from the same counties.<sup>93</sup> Because all the sampled (reported) families had at least one abused child, there was no obvious "normal" group to act as a control. We, therefore, concentrated on families containing at least two children, to see whether the disabled, ugly child was more likely to be "picked on."<sup>94</sup> Table 1 reports on a study of a group of 212 children from seventy-five families with two or more children, who had abused one, but not all, of the children, and where this was the first proven instance of abuse.

We believed that disabled children were more likely to be abused than other children. We also expected that child abuse and neglect might be correlated with other factors, such as the child's age, gender, and whether she might be a threat to adult "competitors" in the home.<sup>96</sup> We sought to determine whether these characteristics would be similar for children who were neglected as well as those physically abused.

The coefficient for the child being disabled (on the second line of Table 1) is positive and significant in all six equations in which it appears, whether on its own or with other variables held constant. A child's disability nearly doubles the chance of being neglected, as can be seen from the line reporting the weighted elasticity, which is the third from the bottom of Table 1 .

The presence of a stepparent or other romantic interest in the home (denoted "Step" in Table 1) is certainly significant in predicting mistreatment: it is negatively and significantly related to neglect, and positively and significantly related to abuse. The presence of a stepparent decreased the chances that a child would be neglected by thirteen to fourteen percent, while it increased the chance that physical (or sexual) abuse would occur by more than twenty-five percent. This is as we expected: when a child competes with an unrelated adult for affection, the child may become a scapegoat. On the other hand, the formation of a "new" family, often with an additional breadwinner, eases the financial problems that are closely correlated with neglect.<sup>97</sup>

Of the other variables, the coefficient for the child's gender was negative and insignificant in the neglect equation, but positive and significant in the abuse equation (indicating that girls were more likely to be abused),<sup>98</sup> as would be consistent with their relative helplessness. Data demonstrates a parental preference for boys, and the greater likelihood for girls to be sexually abused. The age coefficient was positive for both neglect and abuse, but was significant only in the abuse equation. As the child ages, it is easier for the parent to see that she does not measure up to expectations. These findings are consistent with other studies, which report that disabled children are significantly more likely to be abused than normal children.<sup>99</sup>

The profile of the neglected child is quite different from that of the abused child, even though both are chosen from among their siblings for abuse by their parents. Though both are likely to be disabled, the neglected child is not likely to have a stepparent (or surrogate) living in the home. The age and sex of the neglected child are not statistically relevant. In contrast, for the abused child, the presence of a stepparent is very important, as is



disability. Abused children are significantly more likely to be girls (because, with stepparents, much of the abuse tends to be sexual), and to be among the older children in the family.

A few prior studies<sup>100</sup> and at least one book,<sup>101</sup> written for the social work community, have investigated the scapegoating phenomenon as applied to child abuse. These earlier works have found a relationship between such factors as disability and abuse, but there have often been methodological problems with the studies,<sup>102</sup> which may have caused policy makers to pay less than strict attention to them.

#### V. Legal Recommendations Based on Biology

Although the presumption of parental autonomy - that parents, more than any others, must be trusted to act in their children's best interests - maximizes social capital for the majority of families, it may be that the pendulum has swung too far in the direction of parental rights even, after parents have abused their children. It has become extremely difficult to prove permanent parental unfitness.<sup>103</sup> Children are often returned to their parents after quite horrifying examples of abuse. One prominent standard requires the child to be returned unless "[t]he child has been removed from the parents previously, has been returned to his/her parents, has been found to be endangered a second time, requiring removal, has been out of the home for at least six months, and there is a substantial likelihood that sufficient legal justification to keep the child from being returned home . . . will continue to exist in the foreseeable future."<sup>104</sup> The first impulse of the current system has been to try to "cure" the problem through the provision of social services, such as counseling, to the families.<sup>105</sup>

Greater procedural protections required to protect the parents' constitutional rights and the increased number of reported cases of abuse have increased the social work caseload. The resulting lack of attention to individual cases has, in turn, contributed to a mounting crisis in child abuse.<sup>106</sup> Child abuse also increases when there are upswings in drug dependencies and related pathological behavior among parents. This increase in child abuse comes at a time of declining local government revenues, and a reduction in the budgets of many social welfare agencies.

The federal Adoption and Safe Families Act of 1997, signed into law by President Clinton, allows states to add the protection of the child to the goal of reuniting the family.<sup>107</sup> In response, states have changed some of their rules, though they have little guidance on how best to protect children.<sup>108</sup> As it has placed new emphasis on the child's well-being, Congress has asked for more studies to show which families should be reunified and which dissolved. To this end, I suggest that evidence that a child has been scapegoated might be considered as a factor in the dependency or termination decision, but, again, only where there has already been proven abuse. Such a change might have prevented many tragic cases of abuse that have occurred where a scapegoated child was returned to his parents after serious abuse.<sup>109</sup> Such cases include a disabled child who was killed despite a previous intervention by social services because he was unable to tell time,<sup>110</sup> a stepfather who tortured his step-daughter after temporarily losing custody,<sup>111</sup> and an in-the-way child beaten into a permanent vegetative state by his father.<sup>112</sup> A recognition that scapegoated children might be continued targets for parental abuse might also have led to a different result in many landmark decisions, including *Santosky v. Kramer*,<sup>113</sup> *Lassiter v. Department of Social Services*,<sup>114</sup> and *M.L.B. v. S.L.J.*<sup>115</sup> In all of these cases, parental rights were terminated without proper procedural protections, according to the U.S. Supreme Court. The Court supported stronger procedural protections to protect the parent against mistakes.

By itself, the mere propensity to become a scapegoat - whether caused by disability or the problems of a so-called "blended family" - should never alone be a reason to alter family arrangements, for then many children would be doubly harmed by losing the emotional support of their parents. The overwhelming majority of children, after all, will not be abused. But if the parents have previously abused the child, they have violated societal trust. Therefore, the fact that the child has served as a scapegoat should reasonably be taken into account as a factor suggesting the likelihood of continued abuse. Child protective laws might be amended to provide that, after a finding of serious abuse or neglect, a court should take into account the attributes of the

child and the family structure that appear to have contributed to the mistreatment and that make continued parental abuse more likely.

The amended laws should be restricted to the most serious forms of abuse. There are many different ways to raise a child and, short of serious physical abuse, one must be leery of second-guessing parental decisions.<sup>116</sup> Likewise, standards for coercive intervention should take cultural differences into account. The fact that the vast majority of the children in the Cornell study who were neglected were also poor suggests that one appropriate role for government may be providing the medical and educational resources that the child needs, thus relieving the stress the family feels, or contributing to the capital with which they have to work.

According to the biological theories discussed previously, biological parents (and, after them, other relatives) are almost always to be preferred to adoptive parents. However, this presumption appears weaker when the child is disabled and when he may be perceived by his parents, even on a very basic level, as a defective agent for the transmission of their genes. In such cases, a finding of serious abuse is tantamount to a finding that the parent's "selfish gene" has abandoned the child's replicated gene. In the stepparent cases, the new romantic interest may bring in children who seem "more fit" on some level, even to the genetic parent, because their other parent lives in the home, or it may seem important to preserve the relationship, even at the cost of the child. Alternatively, the stepparent may abuse because there is no genetic connection with the child.

The problem addressed here is particularly pressing because many of the children currently awaiting adoption are disabled.<sup>117</sup> There is, therefore, a special concern for screening the fitness of parents who agree to adopt disabled children. In addition, such adoptive parents might reasonably be offered greater financial support in the form of child allowance subsidies to relieve stress.<sup>118</sup> As I mentioned earlier, neglect, in particular, as well as abuse of ADHD children, are very strongly correlated with lack of financial resources.

At the same time, the legal environment has grown more challenging. The U. S. Supreme Court has set high standards for interference with family autonomy,<sup>119</sup> which I have earlier argued is a good thing, and has required significant procedural protections for parents threatened by abuse and neglect proceedings.<sup>120</sup> Meanwhile, Congress has shifted the focus of child protection from preservation of families to promotion of child safety.<sup>121</sup> The federal government has conditioned receipt of significant funds on moving children rapidly out of foster care to return them to their families of origin or to free them for adoptive placement.<sup>122</sup>

These constraints mean that each dollar of child protective funding and each hour of a child protective service worker's time must be carefully spent. Studies like those reported here reveal the families most in need of services. In some cases, studies show that interventions are critical to meet the demand of child protection. Further, advocates for the disabled will be quick to note the connection between abuse, family disruption, and special needs, such as ADHD.

The profiles that fit both the biological and mimetic scapegoating theories focus both on past behavior of the parent and characteristics of the child or family. For instance, various studies of abused children show that those with parents who abuse substances (which, like unemployment, places families in a crisis mode) are likely candidates for repeat abuse.<sup>123</sup> Besharov himself pushed for termination of parental rights where parents were substance-addicted.<sup>124</sup> In those circumstances where a behavior, or combination of behaviors, elevates the risk of repeat abuse, I propose a shift in the burdens of proof as follows: For a mother who abused illegal drugs during pregnancy, I would change the burden of proof from a presumption of "best interests" to a presumption that the newborn should be removed.<sup>125</sup> See Table 2 (on page 292) for those indicia that create increased need for intervention.

As I have already discussed, sociobiologists, including Martin Daly and Margo Wilson,<sup>126</sup> have found that children are at greater risk when a non-related adult is living in the home.<sup>127</sup> Special attention should be paid when children are "disciplined" in these homes.<sup>128</sup> Again, I would not intervene until there was actually a finding of abuse, however. I have described research indicating that children who are disabled are at much greater risk for abuse by parents.<sup>129</sup> For disabled children, I would intervene earlier, and "second guess"

parental medical-care decisions, like the one in Phillip B., if the parents are reluctant to provide routine or life-saving medical treatment.<sup>130</sup>

Where abuse has already occurred, the need to shift away from the presumption that parents always act in their children's best interests is reflected in federal legislation.<sup>131</sup> When there has already been abuse of a sibling, the federal legislation changes the presumption from reunification to termination.<sup>132</sup> The American Law Institute has included similar language in its child custody standards when a parent has previously abused, neglected, or abandoned a child.<sup>133</sup> There is some evidence that a parent abused as a child is likely to repeat that pattern of abuse when he or she has children,<sup>134</sup> as an unfortunate kind of mimetic behavior.

## VI. Social Capital Solutions to Mimetic Violence

As earlier argued, the concept of mimetic violence may prove more useful for describing family violence than the biological explanation. Without negating the importance of biology, mimetic violence theory also explains why religion may mitigate all kinds of violence in the family. Further, evolutionary biology has in the past been misused, and can raise readers' hackles unnecessarily. While mimetic violence may be controversial in some circumstances - mimetic desire explains the data well and offers solutions that are novel and relatively inexpensive.

Réne Girard suggested at the end of / See Satan Fall Like Lightning<sup>135</sup> that although our desire to imitate is just part of human nature, the dangerous mimetic cycling can be stopped. He said this could be done by shifting the focus of our attention away from wanting for the sake of benefiting ourselves and increasing our esteem in the sight of others toward what he characterized as the God-like characteristics of trusting, serving others, and loving unconditionally.<sup>136</sup> These are all qualities that can be created in families, the "mezzo level"<sup>137</sup> between individuals and society. As Rowthorn,<sup>138</sup> Lundberg,<sup>139</sup> and McAdams<sup>140</sup> all note, trust and unconditional love are norms that set people apart, that cause people to become heroes. If we can inculcate them in families, perhaps the inverse of the "unraveling" of cooperative behavior characteristic of the "last period problem" in game theory will spread social capital.<sup>141</sup>

Social capital increases the ability of individuals and families to acquire and benefit from human and financial capital. The most important aspect comes in the form of a "moral code, especially a code supporting trust and confidence between men: a true belief that they will not always let you down in favor of short-term gains."<sup>142</sup> Research shows that trust, or lack of it, flows through the values spread from mothers to daughters, especially in the experiences of marriage and divorce.<sup>143</sup> Society can reinforce these human capital values through promulgation of mediating institutions, the most successful apparently being voluntary religious associations.<sup>144</sup>

A recent literature review by Kristin Ferguson mentions five components of social capital originated by the Coleman piece<sup>145</sup> that have been featured in empirical studies.<sup>146</sup> These are family structure (in Coleman's piece, a two-parent family), the quality of parent-child relations, the adult's interest in the child, parents' monitoring of the child's activities, and extended family exchange and support. The Ferguson review poses an optimal profile of high family and community social capital suggested by the empirical precedents: a two-parent family structure with either a father or stepparent present, frequent parent-child interactions, high interaction in daily lives, high monitoring of children's activities, embeddedness in surrounding social networks, including immediate and extended family supports, local social institutions, and regular church attendance.<sup>147</sup> However, the characteristics operate in different ways depending upon the racial or ethnic background of the family. Parenting, home environment, neighborhood and maternal depression have significant effects on internalizing and externalizing problems for white and black children, but neighborhoods do not matter significantly for Latino families.<sup>148</sup> On the other hand, for poor Latina women (and not Anglo women), familism (the attitude and participation of kin in social networks) does have a significant effect upon whether or not they abuse.<sup>149</sup> In abuse prevention studies, social capital seems to reduce the incidence of both domestic violence and child abuse. In these studies, while more social capital is better, the most effective instruments measured were

church attendance and having two parents. Social capital, even in the worst of circumstances, seems to increase the odds of children doing well.<sup>150</sup> In the studies, social capital includes church attendance, perception of personal social support, and support within the neighborhood. Two or more indices of social capital defined by these terms increased the odds of doing well by about two thirds.<sup>151</sup> For adolescents, their own social capital involves their peers and their use of common spaces as well.<sup>152</sup> Even more to the point, social capital reduces domestic violence and child abuse. For twenty-five years, academics have reported that social capital in the form of personal networks (neighbor-friend and kinship networks) may also reduce the stress that tends to be the outside force inflaming child abuse and setting off that particular scapegoating cycle.<sup>153</sup> Kinship social support did not seem to matter for either inner city boys' or girls' depression or sense of personal safety.<sup>154</sup>

What René Girard's mimetic cycle predicts is thus consistent with the broader social capital literature. Geoffrey Miller<sup>155</sup> noted that rituals resemble social norms since both exist outside the formal legal system and join the individual to the group. Ritual, he writes, unlike law or norms, governs behavior ex-ante by assigning social roles and inducing the individuals and others to accept them.<sup>156</sup> Miller discusses three kinds of rituals. The first, Miller calls a ritual of reformation, for which he lists marriage as an example.<sup>157</sup> To this we should add adoption, which also reforms family roles and alliances. Miller's second type is renewal, for which he lists services and sacrifice. Formal religious participation (and sometimes, with parenting, individual faith) seems to bind families together.<sup>158</sup> The third category mentioned by Miller is restoration, for which he lists confession, purification and cure as examples.

Miller notes that these ritual activities help people to make credible commitments and follow basic cooperative norms.<sup>159</sup> In other words, they build social capital. They do so by shaping and changing identity, so they will act not only to avoid sanctions from others but to "experience the pleasurable sense of felicity that comes with acting consistently with one's sense of identity." <sup>160</sup> As Miller notes, rituals "may channel and control negative emotions" such as jealousy, disappointment, and envy,"<sup>161</sup> which might otherwise "erupt in uncontrolled and dangerous ways." Miller does note that initiation rituals, in particular, are often marked by violence.<sup>162</sup> Miller maintains that people are likely to observe relatively more ritual in societies relatively insulated from technological change than those in the midst of rapid development because ritual "tends to fix social relationships," including those structuring technological production "in a relatively rigid form,"<sup>163</sup> and in places where the legal structure is relatively weak. He uses the example of impoverished neighborhoods, noting that "organized religion is likely to play an important role."<sup>164</sup>

## VII. Conclusion

While the evolutionary biology explanations for child abuse may be helpful and important, more territory can be covered by Girard's mimetic cycling theory. In addition, this better fits the social capital literature in which, in Fukuyama's work, for example, biology plays a helpful, though not completely satisfying, role. The closer one gets to the problem of transmitting genes and survival, the greater the appeal of behavioral biology. But the more the family resembles wider society, as opposed to the family of our earliest human ancestors, the less well the theory fits. Social capital and mimetic theory in particular seem to do a more complete job of explanation.

## Footnote

1. See generally Margaret F. Brinig, *Family, Law, and Community: Supporting the Covenant* (2010).
2. Governor John Winthrop, sermon entitled "Christian Charity," preached aboard The Arabela, Massachusetts Bay (1630) in *A Modell of Christian Charity*. 2 Winthrop Papers 292, 294 (Mass. Hist. Soc, 1931).
3. Gary Becker, *Treatise on the Family* 31-33 (1981); Gary Becker, *A Theory of the Allocation of Time*, 75 *Econ. J.* 493 (1965); Paula England & Gary Farkas, *Households, Employment and Gender* 73-74 (1986); Joan C. Williams, *Unbending Gender* (2000) (arguing that increased goods, in fact, requires an "ideal worker," usually male, who can be more productive only at the expense of his spouse).
4. Studies have shown that married executives are paid more than their single counterparts. Victor Fuchs,

Women's Quest for Economic Equality (1988) 78. They may be freed to be the "ideal worker" because of what their wives do. See Felice N. Schwartz, *Management Women and the New Facts of Life*, 67 Harv. Bus. Rev. 65 (1989).

5. See generally Elizabeth S. Scott & Robert E. Scott, *Marriage as Relational Contract*, 84 Va. L. Rev. 1225 (1998).

#### Footnote

6. Becker, *Treatise*, supra note 3 (noting how his theory of the family, which is built to a large extent on the economic doctrines of comparative advantage and specialization).

7. *Id.* at 30 (discussing comparative advantage within the family). See David Ricardo, *The Principles of Trade and Taxation* (1819).

8. Milton C. Regan, *Family Law and the Pursuit of Intimacy* (1992). Another example is the law of necessities, which allows merchants to extend credit for family purposes to one spouse that will affect the estate of the other. See, e.g., Note, *The Unnecessary Doctrine of Necessaries*, 82 Mich. L. Rev. 1767 (1984).

9. See, e.g., Sir William Blackstone, *Commentaries on the Laws of England* 422-32; Michael Grossberg, *Governing the Hearth* 229 (1985).

10. René Girard, *I See Satan Fall Like Lightning* (2001).

11. See Derek E. Lyons, Andrew G. Young, & Frank C. Keil, *The Hidden Structure of Overimitation*, 104 Proc. of the Nat'l Acad. of Sciences of the U.S. 19751-756 (2007); see also Victoria Horner & Andrew Whiten, *Causal Knowledge and Imitation/Emulation Switching in Chimpanzees (pan troglodytes) and Children (homo sapiens)* *Animal Cognition* 164-81 (2005).

12. Robert H. Frank, *The Demand for Unobservable and Other Nonpositional Goods*, 75 Am. Econ. Rev. 101, 10 (1985) (discussing how people want to see how their things compare with those owned by others).

13. René Girard, *Deceit, Desire & the Novel: Self and Other in Literary Structure* (1961); René Girard, *Violence and the Sacred* 19-52 (1977).

14. Girard, *Deceit, Desire & the Novel*, supra note 13, at 7.

#### Footnote

15. These theories first surfaced in Girard, *Deceit, Desire & the Novel*, supra note 13, and R. Girard, *Violence and the Sacred*, supra note 13.

16. Richard H. McAdams, *Relative Preferences*, 102 Yale L.J. 1, 17 (1992) (stating that envy requires not only that one desires or covets what another has, but also that one consequently feels a threat to self-esteem and acts to preserve oneself in a socially inappropriate matter).

17. René Girard, *The Scapegoat* (1986). For an application, see, e.g., Andrea Dworkin, *Scapegoat: The Jews, Israel, and Women's Liberation* (2000).

18. Gil Bailie, *Violence Unveiled: Humanity at the Crossroads* (1999).

19. Thomas Hobbes *De Cive*, Levlatham (1651).

#### Footnote

20. Richard H. McAdams, *The Origin, Development and Regulation of Norms*, 96 Mich. L. Rev. 338 (1997).

21. Girard, *Deceit, Desire & the Novel*, supra note 13, at 9.

22. Girard, *The Scapegoat*, supra note 17, at 25<sup>^</sup>-6; G. Bailie, *Violence Unveiled*, supra note 18, at 187.

23. John 11:49.

24. See, e.g., Wolfgang Palaver, *A Girardian Reading of Schmitt's Political Theology*, 92 Telos 43 (1992); Sharon Zukin, *Mimesis in the Origins of Bourgeois Culture*, 4 Theory & Soc. 333 (1977); Reinier Leushuis, *The Mimesis of Marriage: Dialogue and Intimacy in Erasmus's Matrimonial Writings*, 57 Renaissance Q. 1278 (2004).

25. See, e.g., David LaChance, *Last Words, Last Meals, and Last Stands: Agency and Individuality in the Modern Execution Process*, 32 Law & Soc. Inq. 701 (2007).

#### Footnote

26. G. Bailie, *supra* note 18, at 51.

27. *Id.* at 185-95.

28. Daniel ch. 13 (Eastern Orthodox). While other Bibles, including the Hebrew Bible, contain this book, they do not include the Suzanna story.

29. G. Bailie, *supra* note 18, at 188.

30. Girard, *I See Satan Fall*, *supra* note 10, at 16-17. Bailie adds covetousness, rivalry, and contempt. G. Bailie, *supra* note 18, at 112.

#### Footnote

31. McAdams, *Relative Preferences*, *supra* note 16, at 5; Robert Rowthorn, *Marriage as a Signal*, in *The Law and Economics of Marriage & Divorce* 132, 142 (eds. Antony W. Dnes & Robert Rowthorn eds., 2000). The comparison most often will be with someone else of relatively close social standing. This was true in the Suzanna story, as Bailie notes. See also Frank, *supra* note 12, at 111.

32. Girard, *I See Satan Fall*, *supra* note 10, at 7-9.

33. Stephen Felder, Ph.D., *Homily on Palm Sunday, 2004*, St. Michael and All Angels Church, Carmel, CA, <http://www.stmikescdm.org/homilies/Passion%20Sunday%202004.htm>.

34. Raymond Lloyd Richmond, *A Guide to Psychology and Its Practice: Family Therapy*, <http://www.guidetopsychology.com/familytx.htm> (last visited Nov. 28, 2011). In family therapy, the "identified patient (IP) is the family member with the symptom that has brought the family into treatment. The concept of the IP is used by family therapists to keep the family from scapegoating the IP or using him or her as a way of avoiding problems in the rest of the system."

35. Mark E. Feinberg et al., *Sibling Comparison of Differential Parental Treatment in Adolescence: Gender, Self-esteem, and Emotionality as Mediators of the Parenting-Adjustment Association*, 71 *Child Dev.* 1611 (2000). Self-esteem seems to moderate the effect. As with the perceptions that husbands and wives do not do equal shares of housework, there is some truth to this perception. Recent work indicates that parents spend more time with older children than their siblings, a total of 2000 hours more. Joseph Price, *Parent-Child Quality Time: Does Birth Order Matter?* 43 *J. Hum. Resources* 240 (2008).

36. Gary S. Becker & H. Gregg Lewis, *On the Interaction Between the Quantity and Quality of Children*, 81 *J. Pol. Econ.* 279 (1973) (predicting that we should transfer nonhuman capital to children to compensate for their lower endowments. Gary S. Becker & Nigel Tomes, *Child Endowments and the Quantity and Quality of Children*, 84 *J. Pol. Econ.* S161 (1976) (arguing that parents also reinforce higher "giftedness" with human capital).

#### Footnote

37. Family Violence Prevention Services, <http://www.serve.com/fvps/>; Elliot Aronson et al., *Social Psychology: The Heart and Mind* 523 (1994).

38. 188 Cal. Rptr. 781 (Ct. App. 1983).

39. Robert Lindsey, *Surgery Follows Pact on Custody*, N.Y. *Tmes*, Oct. 10, 1983, at A12.

40. Frank, *supra* note 12, at 102. "As a parent, an overriding human motivation is a taste for seeing that one's children are launched in life as successfully as possible - which depends on how their skills and endowments compare with others." Relative standing is far more important than the absolute level of consumption in determining well-being. *Id.* at 106.

#### Footnote

41. Kristin Riggins-Caspers et al., *Gene X Environment Interaction and the Moderating Effect of Adoption Agency Disclosure on Estimating Genetic Effects*, 27 *Personality & Ind. Differences* 357 (1999) (containing detailed tables).

42. Francis Fukuyama, *The Great Disruption* (1999), is grounded in biology. Reviewed by Owen D. Jones, *On the Nature of Norms: Biology, Morality, and the Disruption of Order*, 98 *Mich. L. Rev.* 2072 (2000). For a review

of the economics literature from a behavioral biology perspective, see Ted Bergstrom, *Economics in a Family Way*, 34 J. Econ. Lit. 1903 (1996).

43. See David J. Herring, *Kinship Foster Care: Implications of Behavioral Biology Research*, 56 Buff. L. Rev. 495 (2008) (saying that kinship care should be ordered the way genetics would suggest caregivers might be most apt to treat children well - first to maternal grandmothers, last among grandparent choices to paternal grandfathers).

44. See Robin Fretwell Wilson, *The Cradle of Abuse: Evaluating the Danger Posed by a Sexually Predatory Parent to the Victim's Siblings*, 51 Emory L.J. 241 (2002); Owen D. Jones, *Evolutionary Analysis in Law: An Introduction and Application to Child Abuse*, 75 N.C. L. Rev. 1117 (1997) (discussing child abuse by genetically unrelated adults); Margaret F. Brinig & F. H. Buckley, *Parental Rights and the Ugly Duckling*, 1 J. L. & Fam. Stud. 41 (1999), from which parts of this section are drawn.

#### Footnote

45. Martha Minow, *Making All The Difference* (1991).

46. See Brinig & Buckley, *supra* note 44.

47. See, e.g., Mary I. Benedict et al., *Reported Maltreatment in Children with Multiple Disabilities*, *Child Abuse & Neglect* 207 (1990); Roger White et al., *Physical Disabilities as Risk Factors for Child Maltreatment: A Selected Review*, 51 Am. J. Orthopsychiatry 93, 96 (1987).

48. Premature infants are at increased risk for physical abuse and neglect. K.K. Minde, *The Impact of Prematurity on the Later Behavior of Children and on Their Families*, 11 Clinics in Perinatology 227 (1984).

49. See, e.g., Matt Ridley, *The Red Queen: Sex and the Evolution of Human Nature* (1993); Lloyd Cohen, *Marriage, Divorce and Quasi-Rents: "I Gave Him the Best Years of My Life"* 16 J. Legal Stud. 267 (1987).

50. See, e.g., Bd. of Curators of Univ. of Missouri v. Horowitz, 435 U.S. 78 (1978); Daniel S. Hamermesh & Jeff E. Biddle, *Beauty and the Labor Market*, 84 Am. Econ. Rev. 1174 (1994); Peter Passell, *An Ugly Subject: The Prejudice Against Hiring Homely People*, N.Y. Times, Jan. 27, 1994, at A2.

51. Paula England & Gary Farkas, *Households, Employment and Gender* 36<sup>0</sup> (1986) (discussing a "D" or desirability quotient).

52. Ridley, *supra* note 49, at ??6-?9.

53. Richard A. Posner, *Aging and Old Age* 220-22 (1995).

54. 'The birth of a child with a physical or mental disability begins a mourning process with specific stages of resolution, characterized by 'chronic, relentless stress.'" White et al., *supra* note 47.

55. *Berman v. Allen*, 404 A.2d 8 (N.J. 1979).

#### Footnote

56. For example, an eleven-year old boy was recently killed by his father for being unable to tell time. The child's great-grandmother said that he was a slow learner and was attending special education classes. Sari Horwitz, *Father Is Charged in Beating Death of District Boy*, The Washington Post, May 1, 1997, at A1.

57. See, e.g., Lawrence E. Frisch & Frances A. Rhoads, *Child Abuse and Neglect in Children Referred for Learning Evaluation*, 15 J. Learning Disabilities 583, 585 (1982).

58. See, e.g., Stanley R. Friedman, *The Need for Intensive Follow-Up of Abused Children*, in *Helping the Battered Child and His Family* (C. Henry Kempe and Ray E. Heifer, eds. 1972).

59. Becker & Toms, *supra* note 36.

60. Elisabeth Krents, Valerie Schulman, & Sheila Brenner, *Child Abuse and the Disabled Child: Perspectives for Parents*, 89 The Volta Rev. 78, 83 (1987).

61. Martin Daly & Margo Wilson, *Child Abuse and Other Risks of Not Living with Both Parents*, 6 Ethology & Sociobiology 197 (1985); Joy L. Lightcap, Jeffrey A. Kurland, & Robert L. Burgess, *Child Abuse: A Test of Some Predictions from Evolutionary Theory*, 3 Ethology & Sociobiology 61 (1982).

62. Forty-seven percent of divorcing couples involved a wife who had children from a previous marriage. Sally

C. Clarke, Advance Report of Final Divorce Statistics, 1989 and 1990, 43(9), National Center for Health Statistics (Supp. 1995).

#### **Footnote**

63. See generally Sigmund Freud, *Basic Writings of Sigmund Freud* (1995); Gary S. Anderson & Robert Tollison, A Theory of Rational Childhood, 7 Eur. J. Pol. Econ. 199 (1991).

64. Judith A. Seltzer, Consequences of Marital Dissolution for Children, 20 Ann. Rev. Soc. 235 (1994) (reporting that men in particular are far more attached to the children of a new relationship than children of a prior one with whom the man no longer lives).

65. Fukuyama, *supra* note 42.

66. Edmund Wilson, *Sociobiology* (1975); M. Ridley, *The Red Queen*, *supra* note 49; Robert Wright, *The Moral Animal* (1994); Robert Trivers, Evolution of Reciprocal Altruism, 46 Q. Rev. Biol. 35 (1971). Sociobiological discussions are beginning to appear in mainstream social science journals. See, e.g., Lisa Laumann-Billings & Robert E. Emery, Distress Among Young Adults from Divorced Families, 14 J. Fam. Psych. 671, 677 (2000); Steven L. Nock, The Consequences of Premarital Fatherhood, 63 Am. Soc. Rev. 250, 251 (1998).

67. Richard Epstein, Justice Across the Generations in *The Dialogue of Justice, Toward a Self-Reflective Society* 84-89 (Peter Laslett & James S. Fiskin eds., 1992).

68. William N. Friedrich & Allison J. Einbender, The Abused Child: A Psychological Review, 12 J. Clinical Child Psych. 244 (1983).

69. Daly & Wilson, *supra* note 61; Lightcap, Kurland & Burgess, *supra* note 61. Evolutionary psychologists have pointed to risks of jealousy and "mate guarding" as well as the protective function for genetics as factors in abuse. See, e.g., Robert L. Burgess et al., Violence to the Family in Life Span Developmental Psychology: Non Normative Events (Edward J. Callahan & Kathleen A. McCluskey-Fawcett eds., 1983); Martin Daly & Margo Wilson, Violence Against Stepchildren, 5 Current Directions in Psych. Sci. 77 (1996).

#### **Footnote**

70. See, e.g., One ADD Place, "Famous People with Attention Deficit and Learning Disorders" <http://www.oneaddplace.com/famous.htm> for a long list.

71. See, e.g., David Lyman, Possible Link between Attention-Deficit/Hyperactivity Disorder and Reproductive Complications, 4 J. Clin. Psych: Primary Care Companion 104 (2002); Miriam H. Mulsow, Keri K. O'Neal, & Velma McBride Murry, Adult Attention Deficit Hyperactivity Disorder, the Family, and Child Maltreatment, 2 Trauma, Violence & Abuse 36 (2001).

72. Cheryl-Lynn Podolski & Joel T. Nigg, Parent Stress and Coping in Relation to Child ADHD Severity and Associated Child Disruptive Behavior Problems, 30 J. Clin. Child Psych. 503 (2001).

#### **Footnote**

73. Allison M. Briscoe-Smith & Stephen P. Hinshaw, Linkages between Child Abuse and Attention-Deficit/Hyperactivity Disorder in Girls: Behavioral and Social Correlates, 30 Child Abuse & Neglect 1239, 1241 (2006). See also Joseph C. Crazier & Richard P. Barth, Cognitive and Academic Functioning in Maltreated Children, 27 Children & Schools 197 (2005).

74. M.J. Breen & R.A. Barkley, Child Psychopathology and Parenting Stress in Girls and Boys with Attention-Deficit Disorder, 13 J. Ped. Psych. 265 (1988). This stress leads to more divorce among these parents. See Charlotte Johnston, Parent Characteristics and Parent-Child Interactions in Families of Nonproblem Children and ADHD Children with Higher and Lower Levels of Oppositional-Defiant Disorder, 24 J. Abnorm. Child Psych. 85 (1996).

75. Andrea L. Hazen et al., Intimate Partner Violence Among Female Caregivers of Children Reported for Child Maltreatment, 28 Child Abuse & Neglect 301 (2004) (reporting that 44.7% of female caregivers of abused children reported that they experienced physical violence at the hands of a partner, with 29% reporting it in the last year - nationally representative sample of families referred to child protective services).



76. See also Mulsow, O'Neal & Murry, *supra* note 71.

77. See, e.g., Alicia M. Weissman, Gerald D. Jogerst & Jeffrey G. Dawson, Community Characteristics Associated with Child Abuse in Iowa, 27 *Child Abuse and Neglect* 1145, 1151, 1153 & Table 2 (2003).

78. See, e.g., Rachel A. Gordon et al., Family and Neighborhood Income: Additive and Multiplicative Associations with Youths' Well-Being, 32 *Soc. Sa. Res.* 191, 210 (2003).

79. Briscoe-Smith & Hinshaw, *supra* note 73, at 1241 (citing Mariellen Fischer, Parenting Stress and the Child with Attention Deficit Hyperactivity Disorder, 19 *J. Clinic. Child Psych.* 337 (1990)).

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80. *Id.* at 1247.

81. Janet Wozniak et al., Antecedents and Complications of Trauma in Boys with ADHD: Findings from a Longitudinal Study, 38 *J. Am. Academy Child & Adol. Psych.* 48 (1999).

82. See Carolyn Copps Hartley, The Co-occurrence of Child Maltreatment and Domestic Violence: Examining Both Neglect and Child Physical Abuse, 1 *Child Maltreatment* 349 (2002). See also, Carol Cooley & Patrick O'Leary, Mothers' Protection of Their Children after Discovering They Have Been Sexually Abused: An Information-Processing Perspective, 32 *Child Abuse & Neglect* 245 (2008).

83. Center for Disease Control and Prevention "Attention-Deficit/Hyperactivity Disorder (ADHD): Epidemiologic Issues in ADHD." <http://www.cdc.gov/ncbddd/adhd/adhdmedicated.htm>. In 2003, the comparable number diagnosed was about 8.5%. Mental Health in the United States: Prevalence of Diagnosis and Medication Treatment for Attention-Deficit/Hyperactivity Disorder-United States, 2003, *MMWR*, 54(34) 842<sup>7</sup> (2005); available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5434a2.htm> (Fig. 2). These children are also more likely to be injured without intervention by their parents. C. DiScala et al., Injuries to Children with Attention Deficit Hyperactivity Disorder, 102 *Pediatrics* 1415-21 (1998).

84. But see, N. Spencer et al., Disabling Conditions and Registration for Child Abuse and Neglect: A Population Based Study, 116 *Pediatrics* 609 (2005) (based on a sample of 1 19,739 children born in the West Sussex Region of the UK: found moderate to severe learning difficulties associated with 4.69 times more overall maltreatment, most of which was neglect (5.34 times more likely to occur) and sexual abuse (6.38 times more likely to occur)). Reviewed by M. Govindshenoy & N. Spencer, Abuse of the Disabled Child: A Systematic Review of Population-Based Studies, 33 *Child: Care, Health & Dev.* 552 (2006).

An excellent study that has overcome most of these problems (but still cannot show causation) is Lojang Ouyang et al., Attention-Deficit/Hyperactivity Disorder Symptoms and Child Maltreatment: A Population-Based Study, 153 *J. Pediatrics* 851-56 (2008) (using the nationally representative sample of more than 14,000 American adolescents living with their mothers, popularly called Add Health and found, using relaxed definitions of "neglect" and "abuse," that these were related significantly to various types of ADHD symptoms).

#### **Footnote**

85. See, e.g., Friedrich & Einbender, *supra* note 68; Frisch & Rhoads, *supra* note 57; Krents, Schulman, and Brenner, *supra* note 60, at 78, 83; William A. Friedrich & Jerry A. Boriskin, The Role of the Child in Abuse: A Review of the Literature, 46 *Am. J. Orthopsych.* 580, 583-84 (1987); Roger White et al., Physical Disabilities as Risk Factors for Child Maltreatment: A Selected Review, 51 *Am. J. Orthopsych.* 93, 96 (1987).

86. Briscoe-Smith & Hinshaw, *supra* note 73.

87. Kevin Baldwin, Ronald T. Brown, & Michael A. Milan, Predictors of Stress in Caregivers of Attention Deficit Hyperactivity Disordered Children, 23 *Am. J. Fam. Therapy* 149 (1995) (thirty children with confirmed diagnosis of ADHD).

88. Gordon et al., *supra* note 78, at 213.

89. Charlotte Johnston, Parent Characteristics and Parent-Child Interactions in Families of Nonproblem Children and ADHD Children with Higher and Lower Levels of Oppositional Defiant Behavior, 24 *J. Abnormal Child Psych.* 85, 95 & Table II (1996).

#### Footnote

90. *Id.* at 98 & Table III.

91. Brinig & Buckley, *supra* note 44. Descriptive variables are found at 64, Table 2.

92. The Maltreatment of Children with Disabilities and Child Maltreatment in Substance Abusing Families (1991), SIB-068, National Data Archive on Child Abuse and Neglect, Family Life Development Center, Cornell University.

93. Brinig & Buckley, *supra* note 44, at 51, & note 44. Of the 300 children with disabilities, 81 were abused, for an average of 27%. Corresponding overall national figures for 1991 indicate that an average of 4.2 children per thousand were abused, for an average of 2.4%, less than one-tenth as high.

94. See National Data Archive on Child Abuse and Neglect, The Maltreatment of Children with Disabilities Study, Dataset Documentation, Appendix A: Codebook Information for AHNRC3 at 6 (1996). There were 512 such families that had full information, including the ages and physical conditions of all the children, and where parents or other relatives, as opposed to outsiders, abused the child. Abuse was identified as physical assault, sexual abuse, emotional abuse, physical neglect, medical neglect, abandonment, expulsion, inadequate supervision, inattention to special education need, other specified educational neglect, inadequate nurturing or affection, refusal or delay of psychological care, other specified emotional neglect, other specified maltreatment, and drug/alcohol toxicology, addiction or abuse in the child. See also Brinig & Buckley, *supra* note 44, at 51, & note 45 (classifying physical assault, sexual abuse, and emotional abuse as abuse cases, and the rest as neglect cases).

95. Brinig & Buckley, *supra* note 44, at 65 & Table 3.

#### Footnote

96. In the analysis reported here, we could not run the usual, ordinary, least squares regression, but needed to look at the probability that a particular child would be abused, based upon the various factors. This type of multivariate analysis is called probit. Brinig & Buckley, *supra* note 44, at 51 & note 47.

97. Notably, all but three of the neglect cases in our data set involved parents with less than the median income (approximately \$ 13,000 for rural areas and \$ 17,000 for urban areas) of those in the study. See also Laumann-Billings & Emery, *supra* note 66, at 127.

98. Owen D. Jones, Sex Selection: Regulating Technology Enabling the Predetermination of a Child's Gender, 6 Harv. J. L. & Tech. 1, 10 (1992); Lucinda Richards, Controlling China's Baby Boom, 268 Contemporary Review 5 (1996) (reporting that the Chinese gender gap represents 1.7 million fewer female babies appearing on Chinese birth records every year than worldwide rates would lead us to expect).

99. See, e.g., Shirley Cohen & Rachel D. Warren, The Intersection of Disability and Child Abuse in England and the United States, 69 Child Welfare 253 (1990); Linda J. Diamond & Paula K. Jaudes, The Handicapped Child and Child Abuse, 9 Child Abuse & Neglect 341 (1985); Shirley Cohen & Rachel D. Warren, Preliminary Survey of Family Abuse of Children Served by United Cerebral Palsy Centers, 29 Dev. Med. & Child Neurology 12 (1987); Astrid James, Abuse of Disabled Children, 341 The Lancet 341, 553 (1993).

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100. Cohen & Warren, The Intersection of Disability and Child Abuse, *supra* note 99, at 254; Diamond & Jaudes, *supra* note 99; Cohen & Warren, Preliminary Survey of Family Abuse, *supra* note 99; James, *supra* note 99.

101. vlmala pllari, scapegoating in families: intergenerational patterns of Physical and Emotional Abuse (1991).

102. For example, the total number of children observed may be very small. See Sarah H. Ramsey & Robert F. Kelly, Using Social Science Research in Family Law Analysis and Formation: Problems and Prospects, 3 S. Cal. Interdisc. L.J. 631 (1994); or they may all have come from a particular population that suggests they are not representative of all abused children, Cohen & Warren, The Intersection of Disability and Child Abuse, *supra* note 99, at 254.

103. Regardless of substantive standards, the parent has impressive due process protections. See, e.g., M.L.B.

v. S.L.J., 519 U.S. 102 (1996) (parent's right to free transcript); Santosky v. Kramer, 455 U.S. 745 (1982) (enunciating a "clear and convincing" evidence standard before making the finding of abuse); Lassiter v. Dep't of Soc. Servs., 452 U.S. 18 (1981) (noting parent's right to court-appointed counsel in termination proceedings on a case-by-case basis).

#### Footnote

104. The Institute of Judicial Administration and the American Bar Association, Juvenile Justice Standards Project: Standards Relating to Abuse and Neglect, Standard 8.4(C)(2) (requiring at least two proven instances of abuse, plus a substantial time in foster care).

105. See, e.g., Douglas Besharov, Combating Child Abuse: Guidelines for Cooperation Between Law Enforcement and Child Protective Services 2-6 (American Enterprise Institute for Public Policy Research, 1990) (discussing then current policy of protecting intact families).

106. Douglas L. Besharov & Lisa Lauman-Billings, Don't Call It Child Abuse if It's Really Poverty, 3 J. Child. & Poverty 5 (1997); Laumann-Billings & Emery, *supra* note 66, at 125; Robert H. Mnookin, Foster Care: In Whose Best Interest? 43 Harv. Educ. Rev. 599 (1973). See also John E.B. Myers, The Legal Response to Child Abuse: In the Best Interest of Children?, 24 J. Fam. L. 149 (1985-86); Marsha Garrison, Child Welfare Decisionmaking: In Search of the Least Drastic Alternative, 75 Georgetown L. J. 1745 (1987). For a report on California's foster-care system, see State of California, The Little Hoover Commission, Still in Our Hands: A Review of Efforts to Reform Foster Care in California (2003), available at <http://www.lhc.ca.gov/lhc/168/report168.pdf> (last visited Nov. 29, 2011).

107. 105-89, 105th Congress, 1997 H.R. 867, 42 U.S.C. §1305 et seq.

108. See, e.g., Va. Code Ann. §16.1-248, 1 et seq.

#### Footnote

109. See Laumann-Billings & Emery, *supra* note 66, at 131 (citing Ching-Tung Lung & Deborah Daro, Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1995 Annual Fifty State Survey, Chicago: National Committee to Prevent Child Abuse, 1996 (between thirty-five and fifty percent had already been brought to law enforcement or child protective agencies' attention)).

110. See, e.g., Horwitz, *supra* note 56.

111. See, e.g., Brian Mooar, Florida Jury Convicts Man in Stepdaughter's Death, The Wash. Post, Nov. 19, 1996, at B1.

112. DeShaney v. Winnebago Co. Dep't of Soc. Servs., 489 U.S. 189 (1989).

113. Santosky v. Kramer, 455 U.S. 745 (1982).

114. Lassiter v. Department of Soc. Servs., 452 U.S. 18 (1981).

115. 519 U.S. 102 (1996).

116. Institute Standards, *supra* note 104, at §1.4.

#### Footnote

117. One study reported that 82% of the children awaiting adoption have special needs. See Child Welfare League of America, The State of Adoption in America, Children Today, May- June 1989. See also Child Welfare League of America, Health Care Services for Children in Out-of-Home Care: Facts and Figures, available at <http://www.cwla.org/programs/health/healthcarecwfact.htm> (last visited Nov. 29, 2011) (figures from 1997).

118. James A. Rosenthal, Outcomes of Adoption of Children with Special Needs, 3 The Future of Children 77 (1993) (noting that adoptions of disabled children are as successful as those of normal children when the children are adopted before age three).

119. Troxel v. Granville, 530 U.S. 57 (2000).

120. M.L.B. v. S.L.J., 519 U.S. 102 (1996); Santosky v. Kramer, *supra* note 113; Lassiter v. Dep't of Soc. Servs., 452 U.S. 18 (1981).

121. 42 U.S.C.A. §671(a)(15) (2010).

122. Adoption Assistance and Child Welfare Act, 42 U.S.C. §670 et seq. (1980) (current version at 42 U.S.C.A. §670 et seq. (2010)).

**Footnote**

123. For data demonstrating these results, see *The Maltreatment of Children with Disabilities and Child Maltreatment in Substance Abusing Families* (1991), SIB-068, National Data Archive on Child Abuse and Neglect, Family Life Development Center, Cornell University. Analysts have estimated that between 24% to 90% of all child-maltreatment reports involve substance abuse. See, e.g., Elizabeth M. Tracy, *Maternal Substance Abuse: Protecting the Child, Preserving the Family*, 39 *Social Work* 534 (1993); Bridgett A. Besinger et al., *Caregiver Substance Abuse Among Maltreated Children Placed in Out-of-Home Care*, 78 *Child Welfare* 221 (1999) (79% of caregivers met criteria for caregiver substance abuse in sample of 639 children removed from their homes for maltreatment).

124. See, e.g., Douglas J. Besharov, *Children Deserve a Chance to Live; The System Won't Accept the Uncomfortable Truth: Some Parents Are Beyond the Help of Treatment Programs*, *The Orlando Sentinel*, Dec. 22, 1996, at G1; Douglas J. Besharov, *The Children of Crack: Will We Protect Them?*, 46 *Public Welfare* 7 (1989).

125. Cf. *Angela M.W. v. Kruzicki*, 561 N.W.2d 729 (Wis. 1997), a troubling case in which a post-viability pregnant cocaine-addicted mother was hospitalized involuntarily for the duration of her pregnancy, causing the amendment of Wis. Stat. §48.02 to include in its definition of abuse "when used in referring to an unborn child, serious physical harm inflicted on an unborn child, serious physical harm inflicted on an unborn child and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control by the expectant mother of the unborn child in the use of alcoholic beverages, controlled substances or controlled substance analogy, exhibited to a severe degree, and providing in §17 for special treatment or care including professional services of drug treatment for such unborn children."

126. Martin Daly & Margo Wilson, *Family Violence: An Evolutionary Psychological Perspective*. Va. J. of Soc. Pol'y & L.J. 8, 77 (2000).

**Footnote**

127. See, e.g., Daly & Wilson, *supra* note 61; Jones, *supra* note 44.

128. See, e.g., Steve Vogel, *Woman Convicted of Abusing Boy, 5, Montgomery Judge Calls Imprisonment, Other Treatment "Bizarre" and "Malicious,"* *The Washington Post*, Nov. 15, 1997, at B1; Steve Vogel, *"Mommy Put a Leash on Them," Social Worker Recalls Boy's Explanation for Marks on Feet, Other Injuries,* *The Wash. Post*, Nov. 7, 1997, at B7.

129. Brinig & Buckley, *supra* note 44.

130. *In re K.I., B.I. & D.M.*, 735 A.2d 448 (Ct. App. 1979) (premature baby with serious medical problems was seriously neglected by his mother).

131. 42 U.S.C.A. §671, §15.

132. 42 U.S.C.A. §671(15)(D)(2). This was the case in *Santosky v. Kramer*, *supra* note 1 13, and *In re Adoption No. 12612*, 725 A.2d 1037 (1999).

133. American Law Institute, *Principles of the Law of Family Dissolution*, §2.11(l)(a)(2002), limiting allocation of custodial responsibility to parents who have not abused according to state law.

134. MURRAY A. STRAUSS, RICHARD A. GELLES & SUZANNE K. STEINMETZ, *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* 409 (1980).

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135. Girard, *supra* note 10.

136. See also Nathaniel M. Lambert & David C. Dollahite, *How Religiosity Helps Couples Prevent, Resolve, and Overcome Marital Conflict*, 55 *Fam. Relations* 439, 443 (2006): "Aside from unifying couples by providing a shared vision, religiosity seemed to help prevent marital conflict by fostering what we call relational virtues. . . .

Selflessness and unconditional love were especially emphasized."

137. Kristin M. Ferguson, *Social Capital and Children's Wellbeing: A Critical Synthesis of the International Social Capital Literature*, 15 *Int'l J. Soc. Welfare* 2 (2006).

138. Rowthorn, *supra* note 31.

139. Shelly Lundberg, *Sons, Daughters, and Parental Behavior*, 21 *Oxford Rev. Econ. Pol'y* 340 (2005).

140. McAdams, *supra* note 16, at 2 ("rational actors seek not an absolute end, but relative position among peers").

141. See, e.g., David Kreps et al., *Rational Cooperation in Finitely Repeated Prisoners' Dilemma*, 27 *J. Econ. Theory* 245 (1982).

142. Nan Marie Astone et al., *Family Demography, Social Theory, and Investment in Social Capital*, 25 *Pop. & Dev. Rev.* 1, 11 (1999) (quoting George Caspar Homans, *Social Behavior: Its Elementary Forms* 38 (1961)).

#### Footnote

143. Daniel J. Weigel, *Parental Divorce and the Types of Commitment-Related Messages People Gain from Their Families of Origin*, 47 *J. Div. & Remarriage* 15, 19 (2007) (citing Susan E. Jacquet & Catherine A. Surra, *Parental Divorce and Premarital Couples: Commitment and Other Relationship Characteristics*, 63 *J. Marriage & Fam.* 627 (2001)), and also in his own experiment, *id.* at 22 & Table 1 - Lack of Trust and Fidelity, claiming that the message they gained from families of origin was the single largest difference between children of divorce and those who come from intact families and was significant at  $p < .001$  (relies on a number of studies showing that trust (or lack of it) flows through girls' experiences of parental divorce).

144. Annette Mahoney et al., *Marriage and the Spiritual Realm: The Role of Proximal and Distal Religious Constructs in Marital Functioning*, 13 *J. Fam. Psych.* 321 (1999); Adam J. Zolotor & Desmond K. Runyan, *Social Capital, Family Violence, and Neglect*, 117 *Pediatrics* 1124 (2006); Li-Ching Lee, Jonathan B. Kotch, & Christine E. Cox, *Child Maltreatment in Families Experiencing Domestic Violence*, 19 *Violence & Victims* 573, 575 (2004).

145. James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 *Am. J. Soc.* S95 (1988).

146. Ferguson, *supra* note 137, at 5.

147. *Id.* at 9. See also Lee, Kotch & Cox, *supra* note 144, at 587 ("social supports such as the availability of a helpful grandparent and church attendance may mitigate the effect of violence on children in homes experiencing domestic violence.").

148. Lee M. Pachter et al., *Do Parenting and the Home Environment, Maternal Depression, Neighborhood, and Chronic Poverty Affect Child Behavioral Problems Differently in Different Racial-Ethnic Groups?* 117 *Pediatrics* 1329 (2006).

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149. Carol Cooley, *The Relationship Between Familism and Child Maltreatment in Latino and Anglo Families*, 6 *Child Maltreatment* 130 (2001).

150. Desmond K. Runyan et al., *Children Who Prosper in Unfavorable Environments: The Relationship to Social Capital*, 101 *Pediatrics* 12 (1998) (finding though income mattered, too, maternal education (maternal human capital) was not significantly related to child well-being).

151. Jonathan B. Kotch et al., *Stress, Social Support, and Substantiated Maltreatment in the Second and Third and Figure Years of Life*, 21 *Child Abuse & Neglect* 1025, 1031 & Fig. 1 (1997).

152. Virginia M. Morrow, "Dirty Looks" and "Trampy Places" in Young People's Accounts of Community and Neighbourhood: Implications for Health Inequalities, 10 *Critical Pub. Health* 141 (2000) (using qualitative data on British children ages twelve to fifteen).

153. James M. Gaudin & Leonard Pollane, *Social Networks, Stress and Child Abuse*, 5 *Children & Youth Servs. Rev.* 91 (1983).

154. Howard C. Tvenson, *Raising Safe Villages: Cultural-Ecological Factors That Influence the Emotional Adjustment of Adolescents*, 25 *J. Black Psych.* 44, 52 (1998). Neighborhood social capital did matter

significantly in this study.

155. Geoffrey P. Miller, The Legal Function of Ritual, 80 Chi-Kent L. Rev. 1181 (2005).

156. Id. at 1183.

157. Id. at 1184.

#### **Footnote**

158. Girard, supra note 13 (discussing sacrifices are precisely the climax of mimetic violence, if they are directed at another, rather than the person seeking unity with the group).

159. Miller, supra note 155, at 1184.

160. Id. at 1188.

161. Id. at 1193.

162. Id. at 1199.

163. Id. at 1231.

164. Id.

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